



Mark Parkinson, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Division of Environment

August 2, 2010

Mr. Karl Brooks
Regional Administrator
USEPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Dear Mr. Brooks:

On May 13, 2010, the U.S. Environmental Protection Agency (EPA) issued a final rule that adds thresholds for greenhouse gas (GHG) emissions to regulations that define when permits under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are required for new and existing sources of air pollution. The final rule "tailors" the requirements of these Clean Air Act (CAA) permitting programs to limit which facilities will be required to obtain PSD and Title V permits. The final rule was published in the Federal Register on June 3, 2010, (75 FR 31514) with an effective date of August 2, 2010.

The final rule requests that states submit information outlining their intentions regarding the tailoring rule to EPA by August 2, 2010. This information is needed to determine whether it is necessary to finalize EPA's proposed limited approvals for any SIP-approved PSD and part 70 Title V state programs. This letter is intended to fulfill EPA's request. Kansas must revise its regulations to implement the Tailoring Rule; the following is a summary of the proposed regulatory action and an estimated timeframe.

Currently there are no statutes, definitional or other, making up the Kansas air quality act (Kansas Statutes Annotated (K.S.A.) 65-3001 et seq.), which prevent the Kansas Department of Health and Environment (KDHE) from adopting the federal Tailoring Rule. Specifically, KDHE is proposing to incorporate the modified definition of "major source" and the new definition for "subject to regulation" in a new K.A.R. 28-19-200a and to update the adoption by reference of 40 C.F.R. §52.21 and 40 C.F.R. Part 51 Subpart I in the existing K.A.R. 28-19-350.

Title V: KDHE's Title V permitting regulations' (K.A.R. 28-19-500 et seq.) applicability is triggered by the definition of "major source" as defined at K.A.R. 28-19-200(kk). Currently the definition does not rely on the phrase "subject to regulation," therefore we cannot simply depend on an interpretation of the term to implement the Tailoring Rule. Further, the final Tailoring Rule amends the existing definition of "major source" to incorporate the phrase "subject to regulation" to implement the part 1 and 2 thresholds for greenhouse gases (GHGs).

KDHE is proposing to add a new K.A.R. 28-19-200a to the Kansas Ambient Air Quality Standards and Air Pollution Control Regulations (Kansas Administrative Regulation (K.A.R.) 28-19-1 et seq.) specifically to update the Tailoring Rule amended definition of "major source" and addition of the new definition "subject to regulation" to align the Title V permitting definitions with the federal regulations.

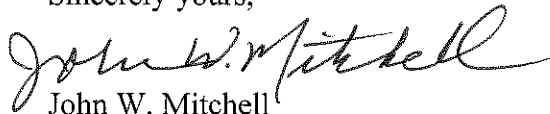
Prevention of Significant Deterioration: Kansas implements the New Source Review (NSR) program for major stationary sources in attainment areas under the requirements of 40 C.F.R. §52.21 as adopted by reference in K.A.R. 28-19-350. NSR in attainment areas is commonly called Prevention of Significant Deterioration (PSD). To implement the final Tailoring Rule, KDHE must simply update the adoption by reference of 40 C.F.R. §52.21 and 40 C.F.R. Part 51 Subpart I to include the adoption of the *Federal Register* publication of the Tailoring Rule and amendments to §52.21.

Rulemaking Timeframe: Kansas' rulemaking process requires approval of the Secretary of Administration and the Attorney General before a new or amended rule may be proposed. This process is independent of KDHE and could potentially delay the final adoption and implementation of the Tailoring Rule. KDHE intends to expedite the process by solely adopting by reference the *Federal Register* publication of the final Tailoring Rule and not adopting all of the changes made to the respective parts made since the last date of adoption. Specifically, for K.A.R. 28-19-350 the last date of adoption for the code of federal regulation (C.F.R.) §52.21 is currently as revised on July 1, 2007. Proposed amendments to this rule to incorporate the Tailoring Rule would retain this date with the addition of language to specifically pick up only those changes to §52.21 and 40 C.F.R. Part 51 Subpart I which are made in the Tailoring Rule rulemaking publication.

Kansas will work with EPA to incorporate the rule changes needed to implement both step 1 and 2 of the Tailoring Rule as expeditiously as practicable. We project that the changes necessary to implement both the Title V and PSD requirements will be completed by April 1, 2011.

Please feel free to contact me, or Tom Gross at 785-296-1692, if you have any questions regarding the proposed actions or timeframe.

Sincerely yours,



John W. Mitchell

Director of the Division of Environment

MM: sdb
Enclosures

cc: Roderick L. Bremby, Secretary, KDHE
Rick Brunetti, Director, Bureau of Air